STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 22, 2007
v	No. 269337 Oakland Circuit Court
BRODERICK WILLIAM HUNTER, Defendant-Appellant.	LC No. 2004-194692-FH

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his bench trial convictions of carrying a concealed weapon (CCW), MCL 750.227, possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony, MCL 750.227b, and resisting or obstructing a police officer causing injury, MCL 750.81d(2). He was sentenced to ten months to five years' imprisonment for the CCW conviction, six months to four years' imprisonment for the marijuana and resisting or obstructing convictions, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant raises issues regarding his stop, flight, and patdown search. These issues pertain to the trial court's denial of his motion to suppress evidence. This Court reviews for clear error a trial court's findings at a suppression hearing. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). A trial court's ultimate ruling on a motion to suppress is reviewed de novo. *Id.*

Both the United States and the Michigan constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. A police officer may, however, temporarily detain a person for the purpose of investigating possible criminal activity even if there exists no probable cause for the person's arrest. *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). "A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot." *Id.* The determination whether an officer has a reasonable suspicion to make an investigatory stop is based on the totality of the facts and circumstances. *Id.* In making this determination, "those circumstances must be viewed 'as understood and interpreted by law enforcement officers, not legal scholars . . . .'" *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001), quoting *People v Nelson*, 443 Mich 626, 632;

505 NW2d 266 (1993). Further, "'[c]ommon sense and everyday life experiences predominate over uncompromising standards.'" *Id.*, quoting *Nelson, supra* at 635-636 (brackets in original).

Not every encounter between a person and a police officer constitutes a seizure. *Jenkins, supra* at 32. "A 'seizure' within the meaning of the Fourth Amendment occurs only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave." *Id.* Thus, "[w]hen an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *Id.* at 32-33. Moreover, a police officer is generally free "'to ask a person for identification without implicating the Fourth Amendment.'" *Id.* at 33, quoting *Hiibel v Sixth Judicial Dist Court of Nevada*, 542 US 177, 178; 124 S Ct 2451; 159 L Ed 2d 292 (2004).

Defendant argues that his initial stop was unconstitutional because Oak Park Public Safety Officer Michael Pinkerton lacked reasonable suspicion to believe that defendant was involved in criminal activity. The record reveals, however, that Pinkerton's initial stop of defendant did not implicate the Fourth Amendment. Pinkerton received a dispatch indicating that an African-American male wearing a black hat and a red coat was harassing customers at a Tim Horton's restaurant. Pinkerton saw defendant, who somewhat matched the description of the person, leave the Tim Horton's parking lot and walk across the street toward a Walgreen's drugstore. Pinkerton approached defendant, identified himself as a police officer, and indicated that he wanted to speak with defendant. Pinkerton asked defendant for his identification, which defendant was unable to provide. Defendant provided his name and birthdate, and Pinkerton conducted a Law Enforcement Information Network (LEIN) inquiry, which revealed no outstanding warrants.

Contrary to defendant's argument, he was not detained at that point, but rather, was voluntarily cooperating with Pinkerton and answering questions. Pinkerton was investigating whether defendant was the person alleged to have harassed customers at the Tim Horton's restaurant. Pinkerton was unaware at that time what the alleged harassment involved or whether it involved criminal activity. Pinkerton's contact with defendant was proper in light of his investigation. Moreover, Pinkerton was free to ask defendant for his identification without implicating the Fourth Amendment. *Jenkins, supra* at 33-34.

There came a point during Pinkerton's conversation with defendant, however, that it became clear that defendant was not free to leave. It appears that defendant was "seized" within the meaning of the Fourth Amendment when he asked to go into the Walgreen's store to see his brother and Pinkerton did not allow him to do so. At that point, a reasonable person would have felt that he was not free to leave. *Id.* at 32. By this time, however, Pinkerton had a reasonable suspicion that defendant had been involved or was about to be involved in criminal activity. Defendant somewhat matched the description of the person alleged to have harassed patrons at the Tim Horton's restaurant. He also indicated that he lived in Oak Park, but could not provide an address or even a street name. Pinkerton thought it significant that defendant was on foot in the winter at midnight, claimed to live in the area, but could not provide his address. Defendant also maintained that he worked as a roofer and had just gotten off work, but it was close to midnight. In addition, he indicated that a friend had dropped him off at the Tim Horton's restaurant, but when Pinkerton asked why the friend did not drop him off at the Walgreen's store if defendant wanted to visit his brother, defendant did not respond. Further, defendant's request

to go into the Walgreen's store to see his brother indicated his desire to leave Pinkerton's presence, and defendant appeared nervous and continuously looked around. Therefore, Pinkerton's conversation with defendant revealed suspicious circumstances warranting further investigation. See *Williams, supra* at 317. Considering the totality of these circumstances, Pinkerton had a reasonable suspicion of criminal activity sufficient to transmute his voluntary contact with defendant into a brief detainment to investigate possible criminal activity. See *Jenkins, supra* at 35.

Defendant also argues that Pinkerton lacked the required suspicion necessary for a patdown search. He contends that the facts did not give rise to any safety concern on the part of Pinkerton and that the circumstances did not create an inference that he was armed or dangerous.

"An officer who makes a valid investigatory stop may perform a limited patdown search for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer." *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996). Under *Terry, supra* at 25-26, the permissible scope of a patdown search is limited to that reasonably designed to discover weapons such as guns, knives, or other hidden instruments that can be used to assault an officer. *Champion, supra* at 99. "The officer must be able to articulate specific facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion. This is an objective standard that essentially involves a determination whether a reasonably prudent person in the particular circumstances would be warranted in the belief that his safety or the safety of others was in danger." *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

Pinkerton wanted to conduct a patdown search of defendant because he was concerned for his safety based on defendant's demeanor and the fact that defendant's answers to Pinkerton's questions and his reasons for being there were not consistent. Therefore, Pinkerton asked defendant whether he had anything on him that he should not be carrying and whether defendant minded if Pinkerton conducted a patdown search. It is irrelevant whether the particular circumstances warranted a patdown search at that time because Pinkerton did not in fact conduct the search at that time. Rather, defendant fled and Pinkerton conducted the search thereafter.

Instead of consenting, defendant stated, "I don't" and immediately fled. Defendant argues that this statement and his act of fleeing constituted free speech protected under the First Amendment and that the police officers infringed on his exercise of his First Amendment rights by tackling him. Defendant's arguments are misplaced because they are based on the erroneous assertion that he was entitled to leave the officers' presence. Because he was properly detained based on a reasonable suspicion of criminal activity, the officers were warranted in continuing to briefly detain defendant until their investigation was completed or their suspicions dispelled. See *Jenkins, supra* at 34-35. Briefly detaining defendant under these circumstances did not violate his Fourth Amendment protections. Thus, the officers were justified in pursuing and apprehending defendant. Thereafter, defendant committed the offense of resisting or obstructing a police officer causing injury while the officers were attempting to restrain him. Accordingly, the officers then had probable cause to arrest him.

Defendant has thus failed to establish a Fourth Amendment violation, and the trial court properly denied his motion to suppress the evidence.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff